



WOKINGHAM BOROUGH COUNCIL

Penalty Notice Code of Conduct

UNCLASSIFIED

Document Control Information

Title: Penalty Notice Code of Conduct

Date: September 2024

Review date: September 2025

Version: 2

Classification: Unclassified

Owner: Carole Vernon, Principal Education Welfare Officer

Version	Date	Description
Version 1	March 2021	
Version 2	September 2024	Policy reformatted and updated throughout to reflect Working Together to Improve School Attendance 2024 guidance.

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1 Background

- 1.1 Wokingham Borough Council's Children's Services are committed to raising standards in education. They recognise that this can be achieved only if pupils are in regular attendance at schools and acknowledge the long established correlation between the absence from pupils at school and poor academic achievement. Good attendance results in higher academic attainment.
- 1.2 In order to comply with the requirements of Human Rights legislation Penalty Notices must be issued in a consistent manner. The purpose of this local Code of Conduct is to ensure that the Penalty Notices for school absence are issued in a manner that is fair and consistent across Wokingham Borough Council. The Code sets out the arrangements for administering Penalty Notices in Wokingham Borough Council and must be adhered to by anyone issuing a Penalty Notice for school absence in this area. The Code complies with relevant regulations and the Department for Education's national framework for Penalty Notices as set out in the 'Working together to improve school attendance' guidance.

2 Consultation

- 2.1 **This Code has been drawn up in consultation with the Headteachers and governing bodies of state-funded schools and the local police force.**

3 Legal Basis:

- 3.1 Section 23 of the Anti-social Behaviour Act 2003 empowers designated Local Authority officers, Headteachers (and Deputy and Assistant Headteachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) came into force on 1st September 2007.

- 3.2. Penalty Notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision academies, and certain offsite places as set out in section 444A(1)(b).
- 3.3 The issuing of Penalty Notices must conform with the requirements of the Human Rights Act and Equal Opportunities legislation.
- 3.4 The national framework for Penalty Notices is published in statutory guidance 'Working together to improve school attendance'. It provides further national guidance on the operation of Penalty Notices schemes for school absence in England.

- 3.5 A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty Notices will usually be issued to the parent or parents with day to day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

4 Rationale:

- 4.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. Research published by the Department for Education in May 2022 found pupils with higher attainment at Key Stage 2 and Key Stage 4 had lower levels of absence over the key stage compared to those with lower attainment.
- 4.2 For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
- 4.3 Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal enforcement is reduced by taking a supportive approach to tackle barriers to attendance and intervening early before the absence becomes entrenched.
- 4.4 The national framework for Penalty Notices is based on the principles that Penalty Notices should only be used in cases where:
- Support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked; and
 - They are the most appropriate tool to change parental behaviour and improve attendance for that particular family.
- 4.5 In Wokingham the Education Welfare Service (EWS) delivers the Local Authority responsibility for Penalty Notice.
- 4.6 Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

5 Circumstances where a Penalty Notice may be appropriate:

- 5.1 When a school becomes aware that the national threshold has been met, they must consider whether a Penalty Notice can and should be issued or not. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks, with one or a combination of the following codes:
- a) Code G – the pupil is absent without permission from the school for the purpose of a holiday.
 - b) Code N – the circumstances of the pupils' absence have not yet been established.
 - c) Code O – the absence is unauthorised by the school
 - d) Code U – the pupil arrived late after the registers were closed.
- 5.2 If repeated Penalty Notices are being issued and they are not working to change behaviour they are unlikely to be the most appropriate tool. The national framework for Penalty Notices sets out that a maximum of two penalty notices per child per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, parents may be prosecuted under Section 444 Education Act 1996. In some cases a Penalty Notice may be deemed inappropriate, and the local authority may seek to prosecute prior to the threshold being reached.
- 5.3 For the purposes of the escalation process, previous Penalty Notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn.
- 5.4 There will be no restriction on the number of times a parent/carer may receive a formal warning of a possible issue of a Penalty Notice.
- 5.5 To ensure consistent deliver of Penalty Notices the following criteria will apply:
- Other than in specific circumstances* the liable parent/carer will receive a formal Notice to Improve and given a specified period of time to effect an improvement.
- * *no warning given when absence is due to unauthorised holiday.*
- The deliberate taking of a holiday in term time without/against school permission (where it can be clearly demonstrated that the parents/carers understood that permission had not/would not be given) and where this has created unauthorised absence of at least 10 sessions (5 days or more), whether consecutively or not, in a 10-school week period, will result in the issuing of a Penalty Notice.
- 5.6 Schools must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate. This must include strategic discussions with the

schools named Education Welfare Officer (EWO) and any services which have involvement with or knowledge of the pupil/family.

6 Notice to improve

- 6.1 A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a Penalty Notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a Notice to Improve should usually be sent to give parents a final chance to engage in support. An authorised officer can choose not to use one in any case, including cases where support is appropriate, where they do not expect a Notice to Improve to have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

7 Procedure for Issuing Penalty Notices and Notices to Improve:

- 7.1 In Wokingham all Penalty Notices and Notices to Improve will be issued through the Education Welfare Service (EWS). This will ensure consistent and equitable delivery, retain home-school relationships and allow cohesion with other enforcement sanctions. The following considerations will be made before issuing a Penalty Notice to ensure consistency of approach:

- In cases where support is not appropriate (for example, for holidays in term time), consider on a case-by-case basis:
 - Is a Penalty Notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
 - Is issuing a Penalty Notice in this case appropriate after considering any obligations under the Equality Act 2010?
 - Is it in the public interest to issue a Penalty Notice in this case given the Local Authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?
- In cases where support is appropriate, consider on a case-by-case basis:
 - Has sufficient support already been provided?
 - Is a Penalty Notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
 - Is issuing a Penalty Notice in this case appropriate after considering any obligations under the Equality Act 2010?

- Is it in the public interest to issue a Penalty Notice in this case given the Local Authority would be responsible for any resulting prosecution for the original offence in cases of non-payment?
- 7.2 If the answer to the above questions is 'yes', then a Penalty Notice (or a Notice to Improve in cases where support is appropriate) will usually be issued.
- 7.3 Notices to Improve will require an improvement period of up to 30 school days (taken on a case by case basis, dependant on circumstances) and this will need to be monitored by the school and Education Welfare Service, with regular reviews in the normal manner. Failure to meet the agreed targets will result in the Penalty Notice being issued with no further warning.
- 7.4 The decision about whether the criteria are met for issuing a fine will be made by the Education Welfare Service. In cases where a pupil has moved school or Local Authority area in the previous 3 years an additional check should be made to try and ascertain whether previous Penalty Notices have been issued to the parent in respect of the pupil. Where the pupil's previous school was in the same Local Authority area this check will be simple. If the pupil has moved between Local Authorities in the previous 3 years and the previous Local Authority(ies) is known they should be contacted to check whether a Penalty Notice has been issued to that parent for that pupil in the previous 3 years. These checks can be made by the school and/or Local Authority depending on the agreed local process. In cases where the previous Local Authority is not known or the information cannot be, or is not, provided by the previous Local Authority, it should be assumed that the parent has not previously received a Penalty Notice, and the escalation process started as a new case.
- 7.5 Penalty Notices and Notices to Improve will usually be issued by post and never as an on the spot action; this is to satisfy that all evidential requirements are in place. First class post and certificate of posting will be used. In some circumstances these will also be emailed.
- 7.6 The EWO will receive requests to issue Penalty Notices from schools, Thames Valley Police and neighbouring Local Authorities. These requests will be actioned, provided that:
- all relevant information is supplied in the specified manner;
 - the circumstances of the pupil's absence meets all the requirements of this Code;
 - the issue of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
- 7.7 The EWS will respond to all requests within 10 school days of receipt and where all criteria are met will:
- Issue a formal written warning to the parents/carers of the possibility of a Penalty Notice being issued.

- In the same letter set a period determined by the Education Welfare Service within which the pupil must have no unauthorised absence.
- Issue a Penalty Notice through the post at the end of this period if the required level of improvement has not been achieved.
- Issue a Penalty Notice for unauthorised holiday absence only after the holiday/absence has occurred.

8 Procedure for withdrawing Penalty Notices:

8.1 There is no right of appeal by parents against a Penalty Notice. Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- proof has been established that the Penalty Notice was issued to the wrong person, or
- the use of the Penalty Notice did not conform to the terms of this Code, or
- there is a material error in the Penalty Notice.

9 Payment of Penalty Notices:

9.1 Arrangements for payment will be detailed on the Penalty Notice.

9.2 Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

9.3 The first Penalty Notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days.

- A second penalty notice issued to the same parent in respect of the same pupil is charged at a flat rate of £160 if paid within 28 days.

- A third penalty notice cannot be issued to the same parent in respect of the same child within 3 years of the date of issue of the first. In a case where the national threshold is met for a third time (or subsequent times) within those 3 years, alternative action should be taken instead. This will often include considering prosecution, but may include other tools such as one of the other attendance legal interventions.

9.4 The Local Authority retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event on non-payment).

10 Non-payment of Penalty Notices:

10.1 Non-payment of a Penalty Notice, other than those for unauthorised holiday absence, will trigger the fast-track prosecution process under the provisions of Section 444 of the Education Act 1996.

- 10.2 Non-payment of a Penalty Notice issued for unauthorised holiday absence will result in immediate referral for prosecution for non-school attendance. Where a prosecution does not result following non-payment then the Penalty Notice will be withdrawn under Regulation 9 of the 2007 Regulations.

11 Policy & Publicity

- 11.1 Deployment of Penalty Notices as a sanction is included in the Local Authority's Attendance Policy.
- 11.2 All school Attendance Policies should include information on the deployment of Penalty Notices and this will be brought to the attention of all parents/carers.
- 11.3 The Local Authority will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

12 Reporting & Review:

- 12.1 The EWS will prepare and publish an annual report on the number of Penalty Notices issued and their outcomes
- 12.2 The EWS will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.

Appendix 1: Penalty Notice – First time offence

Penalty Notice – first time offence
S.444 EDUCATION ACT 1996
Please read the notes overleaf carefully

PART 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, their parent is guilty of an offence under s.444 Education Act 1996.

To: «Parent_Salutation» «Parent_Forename» «Parent_Surname»

Of: «Parent_Address_1», «Parent_Address_2» «Parent_Address_3» «Parent_Address_4»
«Parent_Postcode»

You are a parent/carer of «Forename» «Surname» DOB: «DOB»(called in this notice “the pupil”) who resides at «Pupil_Address_1» «Pupil_Address_2» «Pupil_Address_3» «Pupil_Address_4» «Pupil_Postcode» and is a registered pupil at «School»

Between «First_Date» and «Second_Date» the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £80/£160 in accordance with the details in Part 2. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 21 days. If paid after 21 days but within 28 days the penalty is doubled to £160. Details of how to pay can be found in PART 2 of this notice.

*Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by «M_28_Days», you may be prosecuted for the offence and could be subject to a fine of up to £2,500.***

This notice is issued by Sara Harwood, Education Welfare Officer of Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1BN.

Issue Date: «Issue_Date»

21 days: «M_21_Days»

28 days: «M_28_Days»

NOTES

1. Contact Details.

If you have any queries about this notice, please contact the penalty notice officer at penalty.notices@wokingham.gov.uk

2. Amount of Penalty.

The amount of penalty is as follows:

When paid;

- i. Within 21 days £80*
- ii. Within 28 days £160*

3. Code of Conduct.

This notice is issued in accordance with a local code of conduct drawn up by the Wokingham Borough Council. Any questions or correspondence about the code should be addressed to the Education Welfare Department

4. Withdrawal.

The Wokingham Borough Council may withdraw this notice if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe that the notice was wrongly issued you must contact Wokingham Borough Council to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. Wokingham Borough Council will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

5. Payment.

Please refer to the penalty notice payment form in PART 2 for details on how to pay.

6. Prosecution.

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.

7. Meaning of Parent

The term "parent" is that as defined by section 576 of the Education Act 1996. This defines 'parent' as:

- all natural parents, whether they are married or not.
- any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Penalty Notice Payment Form

PART 2

Penalty Notice payment timeframes

- £80 - if payment made within 21 days
- £160 - if payment made between 22 and 28 days
- Prosecution - if no payment received by day 28

Methods of Payment

Please use the following 8-digit reference number when making payment: «Reference_Number»
It is important that you get this number correct to ensure that payment is allocated to the correct case.

Online (preferred payment method)

Go to: www.wokingham.gov.uk/payments

Make sure you select 'Education Welfare' under account group and 'School Fixed Penalty Notice' under account type. Please enter your child's name and the following 8-digit reference number in the relevant fields: «Reference_Number»

By Phone

Using debit or credit card – phone **0300 456 0505 (option 6)**, 24-hour payment line

Make sure you use the following 8-digit reference number when prompted: «Reference_Number»

By Post

Using cheque payable to Wokingham Borough Council (see address below)

✂.....

PENALTY NOTICE REMITTANCE ADVICE

If paying by cheque, please complete the following and return it with your payment to: Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1BN

Name: «GreetingLine»

Address: «Parent_Address_1» «Parent_Address_2» «Parent_Address_3» «Parent_Postcode»

I attach payment in the sum of £.....

Signed:Date.....

Pupil Name: «Forename» «Surname» Revenue Code: **MIC001** Reference: «Reference_Number»

Appendix 2: Penalty Notice – Second offence

Penalty Notice – second offence
S.444 EDUCATION ACT 1996
Please read the notes overleaf carefully

PART 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, their parent is guilty of an offence under s.444 Education Act 1996.

To: «Parent_Salutation» «Parent_Forename» «Parent_Surname»

Of: «Parent_Address_1», «Parent_Address_2» «Parent_Address_3» «Parent_Address_4»
«Parent_Postcode»

You are a parent/carer of «Forename» «Surname» DOB: «DOB»(called in this notice “the pupil”) who resides at «Pupil_Address_1», «Pupil_Address_2» «Pupil_Address_3» «Pupil_Address_4» «Pupil_Postcode» and is a registered pupil at «School»

Between «First_Date» and «Second_Date» the pupil failed to attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £160 in accordance with the details in Part 2. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 28 days. Details of how to pay can be found in PART 2 of this notice.

*Late or part payments will not be accepted and no reminders will be sent. **If payment is not received by «M_28_Days», you may be prosecuted for the offence and could be subject to a fine of up to £2,500.***

This notice is issued by Sara Harwood, Education Welfare Officer of Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1BN.

Issue Date: «Issue_Date»

28 days: «M_28_Days»

NOTES

1. Contact Details.

If you have any queries about this notice, please contact the penalty notice officer at penalty.notices@wokingham.gov.uk

2. Amount of Penalty.

*The amount of penalty is as follows:
When paid;*

- i. Within 28 days £160*

3. Code of Conduct.

This notice is issued in accordance with a local code of conduct drawn up by the Wokingham Borough Council. Any questions or correspondence about the code should be addressed to the Education Welfare Department

4. Withdrawal.

The Wokingham Borough Council may withdraw this notice if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe that the notice was wrongly issued you must contact Wokingham Borough Council to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. Wokingham Borough Council will consider your request and will contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence that your child has failed to attend school regularly.

5. Payment.

Please refer to the penalty notice payment form in PART 2 for details on how to pay.

6. Prosecution.

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.

7. Meaning of Parent

The term "parent" is that as defined by section 576 of the Education Act 1996. This defines 'parent' as:

- all natural parents, whether they are married or not.
- any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Penalty Notice Payment Form

PART 2

Penalty Notice payment timeframes

£160 - if payment made within 28 days
Prosecution - if no payment received by day 28

Methods of Payment

Please use the following 8-digit reference number when making payment: **«Reference_Number»**
It is important that you get this number correct to ensure that payment is allocated to the correct case.

Online (preferred payment method)

Go to: www.wokingham.gov.uk/payments

Make sure you select 'Education Welfare' under account group and 'School Fixed Penalty Notice' under account type. Please enter your child's name and the following 8-digit reference number in the relevant fields: **«Reference_Number»**

By Phone

Using debit or credit card – phone **0300 456 0505 (option 6)**, 24-hour payment line

Make sure you use the following 8-digit reference number when prompted: **«Reference_Number»**

By Post

Using cheque payable to Wokingham Borough Council (see address below)

✂.....

PENALTY NOTICE REMITTANCE ADVICE

If paying by cheque, please complete the following and return it with your payment to: Wokingham Borough Council, Civic Offices, Shute End, Wokingham, RG40 1BN

Name: «GreetingLine»

Address: «Parent_Address_1» «Parent_Address_2» «Parent_Address_3» «Parent_Postcode»

I attach payment in the sum of £.....

Signed:Date.....

Pupil Name: «Forename» «Surname» Revenue Code: MIC001 Reference: «Reference_Number»